

ZONING BOARD OF ADJUSTMENT PUBLIC HEARING AND MEETING
February 10, 2016

A public hearing of the Zoning Board of Adjustment was held on Wednesday, February 10, 2016 at 6:30 PM in Room 208, City Hall.

Mr. Reppucci said that the meeting was regularly scheduled for last night, but due to the Presidential Primary, it is tonight.

Gerry Reppucci, Chair
Jack Currier, Vice Chair
J.P. Boucher, Clerk
Kathy Vitale
Mariellen MacKay

Carter Falk, AICP, Deputy Planning Manager/Zoning

Mr. Reppucci explained the Board's procedures, including the points of law required for applicants to address relative to variances and special exceptions. Mr. Reppucci explained how testimony will be given by applicants, those speaking in favor or in opposition to each request, as stated in the Zoning Board of Adjustment (ZBA) By-laws. Mr. Reppucci also explained procedures involving the timing light.

- 1. Ballinger Properties, LLC & BT Realty Limited Partnership, Joanne Charron and Towers Motor Parts Corporation of Nashua (Owners) 242 Main Street, 1 & 5 East Hollis Street (Sheet 31 Lots 1, 2 & 6) requesting the following variances: 1) to allow an electronic changing message center sign on a portion of a new ground sign, 2) to exceed maximum ground sign height, 10 feet allowed, 24 feet proposed, 3) to exceed maximum ground sign area, 50 sq.ft allowed, 88 sq.ft proposed, 4) to exceed maximum wall sign area, 100 sq.ft allowed, 112 sq.ft proposed, 5) to allow an additional wall sign on the building, two permitted, an additional wall sign proposed for eastern façade for a total of three wall signs, and 6) to exceed maximum wall sign area, a total of 200 sq.ft allowed, 285 sq.ft proposed for all three wall signs. D-1/MU Zone, Ward 4. [ONLY VARIANCES #2 AND #3 TABLED FROM 1-12-16 ZBA MEETING]**

Voting on this case:

Gerry Reppucci
Jack Currier
J.P. Boucher
Kathy Vitale

Mariellen MacKay

Mr. Reppucci stated that the applicant has requested that the Board continue this case to the February 23, 2016 meeting.

MOTION by Mr. Reppucci to table this case to the February 23, 2016 meeting.

SECONDED by Mrs. MacKay.

MOTION CARRIED UNANIMOUSLY 5-0.

2. Brian M. & Susan J. Lefebvre (Owners) Northpoint Construction Management, LLC (Applicant) 28 Plymouth Avenue (Sheet 60 Lot 89) requesting variance to encroach 2'-6" into the 25 foot required front yard setback to construct a 22'x7' front farmers porch. RA Zone, Ward 2.

Voting on this case:

Gerry Reppucci
Jack Currier
J.P. Boucher
Kathy Vitale - recused
Mariellen MacKay

Scott Cornett, Northpoint Construction Management. Mr. Cornett said that they're asking for a 2'-6" variance into the front yard setback for a proposed farmer's porch.

Mr. Reppucci said that the application is very thorough, with very clear drawings.

Mr. Cornett said that they're asking for a 22'x7' farmer's porch on the existing property. He said it would be a 2'-6" encroachment. He said that to stay within the ordinance, the porch would be 4'-6" wide, which would not leave any useable space.

Ms. Vitale said at this point, she will be recusing from the case.

SPEAKING IN FAVOR:

Brian Lefebvre, 28 Plymouth Avenue, Nashua, NH. Mr. Lefebvre said that he is trying to professionally improve the appearance of the house, he said that they've lived there for 23 years, and said that they really just want to enjoy the front yard. He said that all the neighbors have shown positive feedback.

SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS:

No one.

MOTION by Mr. Currier to approve the variance application as advertised on behalf of the owner. Mr. Currier said that the variance is needed to enable the applicant's proposed use of the property, which is for a reasonably sized front farmer's porch to enjoy the view to the street.

Mr. Currier said that with the small encroachment, it's within the spirit and intent of the ordinance, it is not contrary to the property values, it is not contrary to the public interest, and substantial justice is served to the owner.

SECONDED by Mrs. MacKay.

MOTION CARRIED UNANIMOUSLY 4-0.

3. Lake Street Mill Condominium (Owner) Cellco Partnership, d/b/a Verizon Wireless (Applicant) 55 Lake Street (Sheet 99 Lot 30) requesting variance for open space, 35% required, 10.6% existing - 10.2% proposed, to add an equipment shelter, condenser pad and generator pad. RC Zone, Ward 6.

Voting on this case:

Gerry Reppucci
Jack Currier
J.P. Boucher
Kathy Vitale
Mariellen MacKay

Attorney Chris Swiniarski, McLane, Graf, Middleton P.C., Manchester, NH. Atty. Swiniarski said that they are requesting to construct a head-in building, and the variance is for the minimum open space on the lot. He said that the building is 20'x25' in size, and HVAC and generator pads associated with it on 4'x8' concrete pads. He said that the building acts as a

single processing center for very small antennas that are strategically placed all over the City. He said that they have some agreements to start putting some of these antennas up. He said that they're like a cell tower, but stretched out over the whole City. He said that they would look like little transformers you would see on a telephone pole, right where the demand is high. He said it really is new technology that allows them to run a better network in keeping with the demand, without creating the impact that traditional wireless companies are typically associated with.

Atty. Swiniarski said that they need the variance for open space, the existing open space is approximately 10.6%, and the 564 s.f. addition will reduce it to 10.2%. He said it's already nonconforming, as 35% is required, and the lesser amount of open space is for a good cause. He said that the proposed building is in the back, so it's not visible to too many people. He said that it's purely a dimensional variance.

Mr. Currier asked to clarify the parking for the site with the addition of the new building.

Atty. Swiniarski said that the building is unmanned, and no one goes to it even daily. He said that there will be periodic visits, at the most twice a month for inspections, but they won't be there for more than a minute or so.

SPEAKING IN FAVOR:

Mark Weissflog, President of Board of Directors, 55 Lake Street, Nashua, NH. He said that they have about 137 parking spaces, and the one space that someone may park in to service the building is more than ample for their needs, there is plenty of parking available. He said at their last meeting, 96% of the building owners were favorable of this construction. He said it's a great revenue source for them, as well as for the City. He said it's a very low impact building, single story, detached, and won't impact the rest of the property.

SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS:

No one.

MOTION by Mr. Currier to approve the variance application as advertised on behalf of the owner. Mr. Currier said that the

variance is needed to enable the applicant's proposed use of the property, which is to add this cellular housing structure on a section of the parking lot.

Mr. Currier said that it's within the spirit and intent of the ordinance, there is no negative impact to parking or snow storage or anything else, it is not contrary to the property values, it is not contrary to the public interest, rather, it should be helpful to the public interest, and substantial justice is served.

SECONDED by Mr. Boucher.

MOTION CARRIED UNANIMOUSLY 5-0.

4. CREG-Temple Street, LLC (Owner) Triangle Credit Union (Applicant) 30 Temple Street (Sheet 33 Lot 31) requesting variance to exceed maximum wall sign height, 20 feet permitted, 76 feet proposed. D-1/MU Zone, Ward 4.

Voting on this case:

Gerry Reppucci
Jack Currier
J.P. Boucher
Kathy Vitale
Mariellen MacKay

Mark Warner, Exec. Vice President, Triangle Credit Union, Nashua, NH. Mr. Warner said that they're looking to move some of their operations center to the seventh floor of this building. He said the request is to get their wall sign up on the face of the building. He said the sign would be similarly placed like the Akumina sign, which is on the other side of the façade, facing Main Street. He said that the Akumina sign is approximately 50 square feet, and this request would be on the seventh floor.

Mr. Warner said that they do have an office on the second floor currently, there is a branch office there, and it's going to be an operations center on the seventh floor.

Mr. Currier asked if the lighting of the proposed sign going to be analogous to the Akumina sign.

Mr. Warner said it will be internally lit letters, they will be green. He said that the Akumina sign is blue, and hasn't seen their sign lit up. He showed the Board a colored picture of what the sign would look like, he said it's roughly to scale.

Mr. Reppucci asked if the owner of the building has allowed them to apply for this request, and if they're involved.

Mr. Warner said that they are supporting this request. He said that when Akumina got their variance two years ago, they could have put up 100 square feet, and put up 50 square feet.

Mr. Reppucci said that isn't the way he remembered their case. He said that the Board approved a size was 50% less than what was allowed if it were at the right height of the building. He said that the Board approved what is up there.

Mr. Falk said that the Akumina variance was for two things, it was for an off-premises sign, and the height. He said that there isn't carte-blanche approval for anyone else to put up a sign at that height. He said that the Akumina sign was a single, separate application for just that sign on the building, any other business would have to meet the ordinance. He said that the Triangle Credit Union sign is solely for the height, as 20 feet is the maximum height for a wall sign in the D-1/MU zone.

Mr. Reppucci said it's difficult for him to make decisions on the whole building, when we're considering only a tenant in the building. He said that the Board should be looking at the totality of the building, and we should be dealing with the building owner, the concern is that everyone in the building is going to want to do this, when we're trying to look out for the aesthetics of the building to the City. He said he didn't want to see ten tenants in the building, and ten signs at the top floor of the building.

Mr. Warner said that he's been on the second floor for over a year now, and only since they're taking over the entire top floor, with a 30-year lease, so that's why the owner is allowing this variance to be applied for. He said that not every tenant could be considered for a sign such as the one proposed.

Mr. Reppucci said that he wished that he was dealing with the building owner.

Mr. Warner said that the building is pretty much full capacity now.

Mr. Currier said that you can't really see the existing sign until you're right at Temple Street. He said past Kelly Ayotte's office, you can't see it. He asked by the time someone sees the sign as they're driving in the right direction, facing the building, he asked how necessary is the sign is.

Mr. Warner said that you can see it from Factory Street, which is on the other side of Main Street, and you can certainly see it from Factory Street. He said that he can see the Akumina sign during the day, from the bridge coming up Main Street, then you lose it when you get in front of the Telegraph building, and then you get it back when you're near Temple Street.

Mr. Currier said that typically, variances run with the land. He said that tenants come and go, and if variances are provided along the way, there's an escalation of variances. He asked if a stipulation would be supported that if, since they're the tenant and not the owner, that it's for the Triangle Credit Union only, such that if Triangle moves on to another building in the future, that at the worst, the next tenant would have to come back and request another variance.

Mr. Warner said that he's not adverse to that. He said that their initial lease is a twelve year lease, and two ten year renewals. He said that they plan to be there for the long term, and if they left, they wouldn't leave the sign on the building. He said that the owner has allowed them to go forward with the variance.

Ms. Vitale said that her recollection was that the Akumina office was on the third floor, and they were going to be relocating up to the seventh floor, and that was a main point in the Board supporting their variance.

SPEAKING IN FAVOR:

No one.

SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS:

No one.

Mr. Reppucci said he's concerned when the applicants, or tenants, come to us instead of the building owner. He said that he believes that the property owners should be coming, because they're accountable to the totality of what goes on the building.

Mr. Currier said he feels the same way, it's like they keep coming back for another bite of the apple, not that it's this applicant, but it puts the Board in a position that we are painted in a corner. He suggested that the Board can ask for the owner to come here, as we are concerned with the proliferation of signs and the totality of the look on the building. He said that he was against the existing sign, because it has limited advertising and it changes the downtown face, when you have signs on the top of tall buildings, however, the sign is there and it's not an overly bright sign. He said he's more comfortable now that it's up and can be seen.

Mrs. MacKay said that the owner signed the application, and it's the tenant that needs the sign, and there could be a stipulation that the variance is only attached to Triangle Credit Union, and if Triangle were to move, then the variance would no longer be applicable.

Mr. Reppucci said he's not saying it wouldn't work, but is not sure if it's an enforceable stipulation, he said if the Board were to grant a certain sign for the building, he said he's not sure if the Board can stipulate that it goes away once Triangle goes away. He said that the Board can stipulate it, but is not sure if it's enforceable. He said that it's a reasonable position both ways, and wishes that the owner was asking for it instead of the tenant.

Mr. Reppucci said that variances run with the land, that's a standard land use law.

Mr. Currier said that this is its own unique application, just as the Akumina sign was. He said that he finds that the Akumina sign is not problematic, because it's not bright, and is willing to approve this application with the stipulation as Triangle only, or, it could be tabled to ask the property owner to come in and specifically address the totality of the sign.

Ms. Vitale asked if there are any other signs on the building

that add to the total signage of the building.

Mr. Falk said that the only other sign on the building is the Akumina one.

Mr. Reppucci said he's comfortable with the stipulation that the sign is only for Triangle, but said that the Board really needs to take a look at this, the property owner really needs to be here. He said that the Board should be dealing with the property owner, who has control of the totality of the signage on the building, but doesn't want to punish Triangle tonight.

Mr. Reppucci said if you see the Tuesday Morning sign on Amherst Street, they moved out, and took their sign down, that is an example of how this works out well, the fact that we granted the Tuesday Morning sign on the side of the building, and it's down now. He asked if a new tenant would have to come back to the Board for a sign there.

Mr. Falk said he'd have to review the case, and the stipulations of approval. He said if the space is vacant for more than two years in a commercial zone, the grandfathered rights of the sign on that space would be null and void. He said he'd have to research the answer a little more.

Mr. Boucher said he'd be fine with that stipulation. He said it's just the height that they're asking for, not the size.

MOTION by Mr. Currier to approve the variance application as advertised on behalf of the applicant. Mr. Currier said that the variance is needed to enable the applicant's proposed use of the property, which is for Triangle Credit Union. He said that a special condition of the property is such that it's a seven story building, with multiple tenants. He said the stipulation on the variance is that the approval is for the Triangle sign only, as the Board is uncomfortable with the proliferation and the totality of the signage on this building, which has multiple tenants, and there is no information that the Board has on the future of growth or proliferation of signs, and without any commitment on behalf of the owner, the Board feels that this sign, with the presentation, the color is reasonable to grant, but is uncertain about other signs in the future, therefore, this variance is for Triangle only as submitted.

Mr. Currier said that the 76 foot high sign is within the spirit and intent of the ordinance, there is no negative impact to surrounding parcels, it is not contrary to the public interest, and substantial justice is served.

SECONDED by Mrs. MacKay.

MOTION CARRIED UNANIMOUSLY 5-0.

MISCELLANEOUS:

Mr. Reppucci said he's going to draft a letter to Corporation Council relative to signage, and ask whether or not approval of a sign variance goes with the land, or if it can specifically be tied to a particular tenant, and if the Board can require that the property owner to be present in sign applications.

Further discussion ensued.

REHEARING REQUESTS:

None.

REGIONAL IMPACT:

The Board did not see any cases that have regional impact.

MINUTES:

January 12, 2016:

MOTION by Mr. Currier to approve the minutes as presented, waive the reading, and place the minutes in the file.

SECONDED by Mr. Reppucci.

MOTION CARRIED UNANIMOUSLY 5-0.

January 26, 2016:

MOTION by Mr. Currier to approve the minutes as presented, waive the reading, and place the minutes in the file.

SECONDED by Mr. Reppucci.

MOTION CARRIED UNANIMOUSLY 5-0.

BYLAWS:

Mr. Falk passed out the revised ByLaws, with the inclusion of the meeting date being changed if there is a municipal, state or national election to the following Wednesday, and they were signed by the Officers. They will be placed in our files and a copy given to the City Clerk's Office.

ADJOURNMENT:

Mr. Reppucci called the meeting closed at 7:51 p.m.

Submitted by: Mr. Boucher, Clerk.

CF - Taped Hearing